

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #1	CCRB Case #: 201709146	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/27/2017 4:16 AM	Location of Incident: Madison Avenue and East 135th Street; Soundview Avenue and the Bruckner Expressway	Precinct: 25	18 Mo. SOL 4/27/2019	EO SOL 4/27/2019	
Date/Time CV Reported Fri, 10/27/2017 5:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/03/2017 11:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Craig Jacob	05974	935049	SRG 1
2. POM Sherif Baksh	00449	933629	SRG 1
3. POM Paul Livingston	14918	951928	SRG 1
4. POM James Morales	17639	952032	SRG 1

Officer(s)	Allegation	Investigator Recommendation
A.DTS Craig Jacob	Force: At Madison Avenue and East 135th Street, in Manhattan, Det. Craig Jacob pointed his gun at § 87(2)(b)	
B.POM James Morales	Force: At Madison Avenue and East 135th Street, in Manhattan, PO James Morales pointed his gun at § 87(2)(b)	
C.DTS Craig Jacob	Discourtesy: At Madison Avenue and East 135th Street, in Manhattan, Det. Craig Jacob spoke discourteously to § 87(2)(b)	
D.POM James Morales	Discourtesy: At Madison Avenue and East 135th Street, in Manhattan, and at Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales spoke discourteously to § 87(2)(b)	
E.DTS Craig Jacob	Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, Det. Craig Jacob spoke discourteously to § 87(2)(b)	
F.POM Paul Livingston	Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Paul Livingston spoke discourteously to § 87(2)(b)	
G.POM Sherif Baksh	Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh spoke discourteously to § 87(2)(b)	
H.POM Sherif Baksh	Abuse: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh damaged § 87(2)(b)'s property.	

Officer(s)	Allegation	Investigator Recommendation
I.POM Sherif Baksh	Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh struck § 87(2)(b) with an asp.	
J.POM James Morales	Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales struck § 87(2)(b) with an asp.	
K.POM Sherif Baksh	Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh used physical force against § 87(2)(b)	
L.POM James Morales	Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales used physical force against § 87(2)(b)	

Case Summary

On October 27, 2017, Sgt. Thomas Medina reported this complaint over the phone with the Internal Affairs Bureau, on behalf of § 87(2)(b). It was referred to the CCRB and received on November 3, 2017, under log number 17-42595.

On October 27, 2017, at approximately 4:16 a.m., § 87(2)(b) was driving with a friend, § 87(2)(b) in the vicinity of East 135th Street and Madison Avenue, in Manhattan. Det. Craig Jacob and PO James Morales, of SRG 1, who were traveling behind them in a marked car, attempted to pull them over, as their vehicle had an obstructed license plate. PO Morales and Det. Jacob allegedly got out of their vehicle, pointed their firearms at § 87(2)(b) and stated, “Pull the fuck over” (**Allegations A, B, C, and D**). § 87(2)(b) drove away from the intersection. The officers pursued them and were joined by PO Sherif Baksh, and PO Paul Livingston, of SRG 1, both of whom arrived at East 135th Street and Madison Avenue while the other officers were attempting to pull over § 87(2)(b).

§ 87(2)(b) fled the officers at a high rate of speed, until eventually his tire blew out and he stopped at Soundview Avenue and the Bruckner Expressway, in the Bronx. All four officers approached § 87(2)(b) and § 87(2)(b) on foot. The officers all allegedly directed discourtesy at § 87(2)(b) stating, “Put your fucking hands up” (**Allegations E, F, and G**). When he reached the vehicle, PO Baksh broke the back-seat passenger side window with his asp (**Allegation H**). The officers opened the driver’s door and § 87(2)(b) exited. PO Morales and PO Baksh struck § 87(2)(b) with their asps, and allegedly punched and kicked him, (**Allegations I, J, K, and L**). Then the officers arrested § 87(2)(b) and § 87(2)(b) for reckless endangerment.

There was no video footage available for this incident.

Findings and Recommendations

Allegation A – Force: At Madison Avenue and East 135th Street, in Manhattan, Det. Craig Jacob pointed his gun at § 87(2)(b)

Allegation B – Force: At Madison Avenue and East 135th Street, in Manhattan, PO James Morales pointed his gun at § 87(2)(b)

Allegation C – Discourtesy: At Madison Avenue and East 135th Street, in Manhattan, Det. Craig Jacob spoke discourteously to § 87(2)(b)

Allegation D – Discourtesy: At Madison Avenue and East 135th Street, in Manhattan, and at Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales spoke discourteously to § 87(2)(b)

Allegation E – Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, Det. Craig Jacob spoke discourteously to § 87(2)(b)

Allegation F – Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Paul Livingston spoke discourteously to § 87(2)(b)

Allegation G – Discourtesy: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh spoke discourteously to § 87(2)(b)

§ 87(2)(b) (Board Review 01) alleged that Det. Jacob and PO Morales approached his vehicle on foot after pulling him over at the intersection of East 135th Street and Madison Avenue. Both officers pointed their guns at him and said, “Pull the fuck over.” Later, when he stopped at Soundview Avenue and the Bruckner Expressway, the officers, who now included PO Baksh and PO Morales, all shouted at him, “Put your fucking hands up.” PO Baksh went on to

say “Motherfucker, why did you run?” and told § 87(2)(b) to “Shut the fuck up.” § 87(2)(b) refused to provide a statement to the CCRB (Board Review 02).

All the officers who were present at either location, Det. Jacob (Board Review 03), PO Morales (Board Review 04), PO Baksh (Board Review 05), and PO Livingston (Board Review 06), stated that no officers exited their vehicle at East 135th Street and Madison Avenue, as § 87(2)(b) never came to a full stop when they attempted to pull him over. Instead, they consistently described that Det. Jacob attempted to pull over § 87(2)(b) using lights and sirens, and § 87(2)(b) slowed down but then sped up and drove away. They all denied that anyone pointed their firearms at § 87(2)(b) or directed profanity at him. They all either denied or could not recall profanity being used at Soundview Avenue and the Bruckner Expressway.

§ 87(2)(g)

Allegation H – Abuse of Authority: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh damaged § 87(2)(b) s property.

§ 87(2)(b) acknowledged that he led the officers on a lengthy high speed chase from Manhattan into the Bronx, which ended after his tire blew out. After he stopped, the vehicle was surrounded by officers, including PO Baksh, who all shouted at him to put his hands up. § 87(2)(b) and § 87(2)(b) immediately put their hands up. When he reached the vehicle, PO Baksh immediately broke the back-seat driver’s side window. At the time, § 87(2)(b) s door was unlocked, and no one had ordered him to open it or get out of the car.

PO Baksh acknowledged that he broke the window of the car with his asp. He stated that § 87(2)(b) had cut him off during the pursuit, causing him to almost collide with a truck and the divider of the Bruckner Expressway. In addition to driving recklessly, PO Baksh saw § 87(2)(b) throw something out of the window of his car which he believed to be a bag of cocaine based on how it looked. All of this caused PO Baksh to suspect that § 87(2)(b) posed a threat to the officers, and may have had a weapon. When the officers approached § 87(2)(b), § 87(2)(b) did not respond to repeated commands to exit the vehicle. PO Morales attempted to open the driver’s door and found it to be locked. PO Baksh could not see through the window, as it had a tint on it. PO Baksh could not recall how many times the officers ordered § 87(2)(b) to open the door, or whether he attempted to open the door prior to breaking the window. He stated that he broke the window because he was unable to see § 87(2)(b) and was concerned that he was a threat to officers’ safety because of his behavior.

PO Morales largely corroborated PO Baksh’s account of the incident; however, he did not corroborate attempting to open the driver’s side door prior to PO Baksh breaking the window. Det. Jacob acknowledged that officers directed § 87(2)(b) to exit the car, and he did not respond. Det. Jacob could not recall if there was any struggle getting the door open, although he recalled that PO Baksh broke the window. PO Livingston did not recall anyone breaking the car’s window or a struggle to get either § 87(2)(b) or § 87(2)(b) out of their vehicle.

In People v. Torres, the Court established that officers may intrude upon a person or his personal effects only to the extent necessary to protect himself from harm while conducting a lawful inquiry (which equated to the entry and search a vehicle without a warrant, in the case of Torres). Such an intrusion must be both justified in its inception and reasonably related in scope

and intensity to the circumstances which rendered their initiation permissible (*People v. Torres* 74 N.Y.2d 224 [1989]) (Board Review 07) (Board Review 16). Although the Torres case concerned a search of a vehicle, it supports the premise that officers may make an otherwise unlawful intrusion of someone's property as necessary to ensure personal safety.

§ 87(2)(g)

Allegation I – Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh struck § 87(2)(b) with an asp.

Allegation J – Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales struck § 87(2)(b) with an asp.

§ 87(2)(b) alleged that he was repeatedly struck with “clubs” on his back, arms, and legs after being pulled from his vehicle at the Bruckner Expressway and Soundview Avenue. This went on for several minutes, even after he was in handcuffs. He denied resisting or not complying with the officers at any point after stopping his car.

§ 87(2)(b) was taken to § 87(2)(b) immediately after the arrest, where he complained of pain to his right shoulder, right arm, and his face. X-rays were conducted, and § 87(2)(b) was found to have no broken bones, dislocations, or any “significant medical condition.” Although there was tenderness noted on § 87(2)(b)'s shoulder, dried blood on his lip, as well as an abrasion on his wrist from the handcuffs, no bruising was noted on other parts of his body (Board Review 08).

PO Baksh acknowledged striking § 87(2)(b) with his asp on § 87(2)(b)'s right hand twice, immediately after he exited the car, and then once more in the back after § 87(2)(b) had fallen to the ground. After that, PO Baksh and PO Morales were able to handcuff § 87(2)(b). PO Baksh stated that he struck § 87(2)(b) because § 87(2)(b) exited his vehicle with his fists clenched, and appeared as if he was going to attack the officers. § 87(2)(b) also resisted the officers after falling to the ground by refusing to put his hands behind his back to be handcuffed. These actions, coupled with leading the officers on a high-speed chase, let PO Baksh to believe that the force was required to quickly get him into custody. PO Baksh further stated that PO Morales struck § 87(2)(b) with an asp several times on his legs, shortly after he stepped out of the car. PO Baksh denied that § 87(2)(b) was ever struck after he was in handcuffs.

PO Morales also acknowledged striking § 87(2)(b) with his asp. He stated that he struck § 87(2)(b) three to four times in the area of his shoulder and bicep, immediately after § 87(2)(b) stepped out of his vehicle. PO Morales stated that he did so because § 87(2)(b) had dropped his hands to his lap and slipped them under his shirt after PO Baksh broke the car's window. This motion made PO Morales suspect he had a weapon concealed in the front of his waistband. § 87(2)(b) kept his hands there as he stepped out of the car, so PO Morales struck him with the asp. After being struck, § 87(2)(b) fell to the ground and PO Morales was able to

see that his hands were empty. PO Morales also denied that § 87(2)(b) was ever struck after he was in handcuffs.

Det. Jacob was not involved in the struggle with § 87(2)(b) and could not describe it in detail, although he acknowledged seeing PO Morales and PO Baksh strike § 87(2)(b) in his shoulders with the asps. PO Livingston did not witness the struggle with § 87(2)(b).

Under the provisions of Patrol Guide Procedure 221.01, officers are permitted to use force in order to overcome resistance and effect an arrest, provided that the force is reasonable under the circumstances. In determining the reasonableness of the force, factors such as the actions taken by the suspect and whether they are attempting to flee should be considered (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO Sherif Baksh used physical force against § 87(2)(b)

Allegation L – Force: At Bruckner Expressway and Soundview Avenue, in the Bronx, PO James Morales used physical force against § 87(2)(b)

§ 87(2)(b) alleged that, in addition to being struck with asps, he was repeatedly kicked and punched in the back, legs, and arms, while he was being placed in handcuffs, and afterwards. PO Baksh and PO Morales denied punching or kicking § 87(2)(b) and no other officers witnessed § 87(2)(b) being punched or kicked. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Review 10).
- PO Paul Livingston has been a member of service for six years and this is the first CCRB complaint to which he has been a party (Board Review 11).
- PO James Morales has been a member of service for six years and has been the subject of five other CCRB complaints and seven allegations, none on which were substantiated. § 87(2)(g) (Board Review 12).
- PO Sherif Baksh has been a member of service for 14 years and has been a subject in nine other CCRB complaints and 20 allegations, none of which has been substantiated.

§ 87(2)(g)

(Board Review 13).

- Det. Craig Jacob has been a member of service for 13 years and has been a subject in six other CCRB cases and nine allegations, none of which has been substantiated. § 87(2)(g)

(Board Review 14).

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of May 11, 2018, the New York City Officer of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 15).
- According to the Office of Court Administration, § 87(2)(b) has no history of convictions in New York City, aside from the criminal charges related to this incident, for which he pled guilty. § 87(2)(b) (Board Review 16).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date